

DW 04-204  
DW 04-205

**LACONIA WATER WORKS**

**Petition to Expand Water Service in the Town of Gilford**

**Order *Nisi* Approving Expansion of Service Area**

**ORDER NO. 24,455**

**April 7, 2005**

**I. BACKGROUND**

On November 1, 2004, Laconia Water Works (LWW) filed a petition with the New Hampshire Public Utilities Commission (Commission) for expansion of water service in a limited area of the Town of Gilford known as the Route 11 K-Mart Plaza. On the same day, LWW filed a petition with the Commission to expand water service to an area in the Town of Gilford known as the Lakes Business Park, Phase II. The Commission Staff (Staff) recommended approval of the petitions and, accordingly, on February 11, 2005 we entered Order No. 24,433 approving the petitions on a *nisi* basis. Specifically, we indicated that the approval granted in the order would be effective as of March 14, 2005 unless LWW failed to publish the Order. We directed LWW to publish the text of the Order in a newspaper of state wide circulation, with a copy mailed to the Laconia City Clerk and the Gilford Town Clerk, no later than February 21, 2005. On April 4, 2005, LWW advised the Commission in writing that it had not accomplished the publication required by Order No. 24,433.

In these circumstances, we deem it appropriate to treat our previous Order *nisi* annulled, pursuant to our authority under RSA 365:28, as not having become effective, a condition precedent (publication) having not been satisfied by the petitioner.

LWW is an independent municipal entity providing water service to the City of Laconia and to limited areas outside Laconia. LWW states its filings were prompted by its receipt of a number of requests from potential customers seeking water service in the proposed service areas. LWW states that it has ample capacity to serve the proposed areas, and that no other entity is available to provide water service. We will address both petitions in one order for administrative efficiency.

The proposed new service areas in Gilford are contiguous to LWW's existing service areas, and contain sites for new industrial and commercial uses. The proposed service areas are shown on Exhibits 1 and 2 to LWW's petitions. New mains to serve these customers within the proposed franchise areas will be funded by the new customers.

On February 8, 2005, Commission Staff (Staff) filed a letter with the Commission recommending that the Commission approve LWW's petitions. Staff attached to its letter data responses submitted by LWW which included a copy of the Intermunicipal Agreement (Agreement), dated May 15, 2001, between the City of Laconia and the Town of Gilford. The Agreement is intended to foster mutually beneficial development on both sides of the Laconia-Gilford municipal boundary in the areas adjacent to Routes 3 & 11 and adjacent to the Laconia Airport. The Agreement calls for connection of new water mains in these areas to LWW for new water service.

As part of its discovery responses, LWW provided a letter from the Department of Environmental Services (DES) wherein DES determined LWW satisfied the suitability and availability requirement of RSA 374:22,III. According to LWW's petition, LWW engineers had reviewed the proposed service areas through computer modeling and found service to the

proposed franchise areas would not adversely affect existing customers. The Board of Water Commissioners concluded that LWW had sufficient volume and pressure to serve the proposed franchise areas with water of good quality and quantity. Lastly, the Board of Selectmen for the Town of Gilford, by letters dated April 9, 2004, supported the franchise expansions, stating they will have a positive effect on economic development activities in Laconia, Gilford, and the Lakes Region.

With respect to rates, LWW states that it will provide service to new customers in Gilford on the same terms as within its existing service areas in both Laconia and Gilford. Staff noted, however, that in its data responses, LWW indicated that it anticipated charging the 15% maximum allowable premium to the new Gilford customers. No implementation date for this charge was proposed. Staff noted that a rate variance for customers outside municipal boundaries that does not exceed 15% of the rates charged to municipal customers is permissible pursuant to RSA 362:4, III-a(a) (1).

## **II. COMMISSION ANALYSIS**

Pursuant to RSA 362:4, II municipal corporations furnishing water service outside their municipal boundaries shall not be considered a public utility for purposes of accounting, reporting, or auditing functions with respect to said service. Pursuant to RSA 362:4, III-a(a) (1), municipal corporations still must comply with franchise application requirements of RSA 374:22. RSA 374:22, in turn, requires Commission approval of the franchise expansions. It is the policy of this Commission that granting of new franchise areas be consistent with the orderly development of the region. *Pennichuck Water Works*, 72 N.H. P.U.C. 589, 593 (1987). The

Commission shall grant such franchise approval whenever, after due hearing, the Commission finds the action would be for the public good.

Having reviewed the record contained in the dockets before us, we find that LWW's proposed expansion to serve the Route 11 K-Mart Plaza and Lakes Business Park, Phase II are in the public good. The Commission has historically encouraged coordination among various parties who may serve the water needs of a particular area. The City of Laconia and the Town of Gilford have made a major investment in developing a comprehensive and coordinated plan for meeting their combined economic development goals along their joint municipal boundary, as evidenced by the Agreement. This cooperation should minimize utility infrastructure costs and benefit all customers. In addition, we recognize LWW's right, pursuant to RSA 362:4,III-a(a) (1), to add a 15% premium on to the rates of the new customers in Gilford over the rates charged to customers within Laconia and remain exempt from Commission regulation.

Pursuant to RSA 374:26, permission to expand a franchise may be granted without hearing when all interested parties are in agreement. The record indicates that the Town of Gilford, City of Laconia, Board of Water Commissioners, DES, and Staff all agree that approval of LWW's proposed expansions are in the public good. While it appears that all interested parties are in agreement, we will nonetheless afford interested parties the opportunity to comment. Accordingly, we will issue our decision on a *nisi* basis.

**Based upon the foregoing, it is hereby**

**ORDERED *NISI***, that subject to the effective date below and pursuant to RSA 374:22 and 26, Laconia Water Works is authorized to extend water service into the limited areas

of the Town of Gilford, known as the Route 11 K-Mart Plaza and Lakes Business Park, Phase II, as set forth in the franchise descriptions and maps included with Laconia Water Works' petitions; and it is

**FURTHER ORDERED**, that Laconia Water Works is exempt from Commission regulation in accordance with RSA 362:4,III-a(a) (1); and it is

**FURTHER ORDERED**, that Laconia Water Works shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, with a copy mailed to the Laconia City Clerk and the Gilford Town Clerk, such publication to be no later than April 18, 2005 and to be documented by affidavit filed with this office on or before May 9, 2005; and it is

**FURTHER ORDERED**, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than April 25, 2005 for the Commission's consideration; and it is

**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than May 2, 2005; and it is

**FURTHER ORDERED**, that this Order *Nisi* shall be effective May 9, 2005, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this seventh day  
of April, 2005.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Michael D. Harrington  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary